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May 16, 1996

**VIA FEDERAL EXPRESS MAIL--PRIORITY OVERNIGHT  
SERVICE**

Mr. William F. Caton, Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, DC 20554

Dear Mr. Caton:

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Re: In the Matter of Implementation of the Local Competition  
Provisions in the Telecommunications Act of 1996  
CC Docket No. 96-98

Enclosed for filing are the original and sixteen copies of the Initial  
Comments of the Michigan Exchange Carriers Association in the above-referenced  
matter. This filing replaces our earlier submission of May 15, 1996, as we believe  
page 1 was inadvertently omitted.

Thank you for your assistance in this matter.

Very truly yours,

FOSTER, SWIFT, COLLINS & SMITH, P.C.



Glen A. Schmiede

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

Implementation of the Local Competition )  
Provisions in the Telecommunications Act )  
of 1996 )

CC Docket No. 96-98

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**INITIAL COMMENTS OF THE MICHIGAN EXCHANGE CARRIERS ASSOCIATION**

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**May 15, 1996**

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**I. INTRODUCTION AND SUMMARY COMMENTS.**

**A. The Michigan Exchange Carriers Association Has A Membership Comprised Of Small Rural LECs Whose Characteristics Are Different From Large Urban LECs And Who Should Therefore Be Treated Differently.**

The Michigan Exchange Carriers Association ("MECA") is a Michigan association whose membership is comprised of 34 small local exchange carriers ("LECs") in Michigan. MECA's members generally serve the rural areas of Michigan and provide basic local exchange service and toll access service. MECA was formed to establish joint intrastate toll access rates for these small rural LECs, to administer an intrastate access "pool" and to address access-related matters on their behalf. MECA's members achieve administrative efficiencies by having one entity who deals with regulatory bodies with regard to access service.

MECA has represented Michigan's small rural LECs in proceedings addressing local competition and interconnection in Michigan since 1987. MECA files these comments for the reason that the Federal Communications Commission's ("FCC's") decision on the implementation of the local competition provisions of the Telecommunications Act of 1996 will have a significant impact on MECA's member companies, including affecting their toll access revenues.

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Rural LECs such as MECA's member companies generally only provide basic local exchange service and access services. Some MECA members do provide custom calling features and other incidental non-regulated services, but in their small rural markets the demand for these services is low. Therefore, the variety of services over which rural LECs can recover their shared and common costs is very limited. Access and local service contribute the bulk of revenues needed to recover shared and common costs. This is diametrically opposite of the urban LECs in Michigan, such as Ameritech Michigan and GTE, who, in addition to basic local and access service, provide toll service and a vast array of custom calling features and other non-regulated services. This gives the urban LECs and Regional Bell Operating Companies ("RBOCs") the ability to recover shared and common costs from many different sources.

The size of the rural LECs' customer base as compared to the RBOCs and other urban LECs demonstrates the need to treat rural LECs differently regarding local competition. As an example, the average number of customers per central office and the density of subscribers along a cable route are significantly different for large LECs and RBOCs than for small rural LECs, such as MECA member companies.

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In 1994, the Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO") published a comprehensive report showing the relationship between the number of customers and the facilities required to serve those customers. The study showed that the average number of subscriber access lines per central office for a RBOC is 11,000; whereas, for a rural company member of the National Exchange Carrier Association ("NECA"), which includes all MECA members, the number is 1,275 subscriber access lines per central office.<sup>1</sup>

Also telling is the number of subscribers per mile of the local loop. RBOCs nationally have 130 subscribers per route mile and more than 330 subscribers per square mile; whereas, small LECs have 6.3 per route mile and 4.4 per square mile. The comparable average for MECA member companies is 8.3 subscribers per route mile and 11.7 subscribers per square mile.

The difference between the number of customers served by the urban LECs and RBOCs versus the MECA member company LECs in terms of central

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<sup>1</sup>Organization for the Protection and Advancement of Small Telephone Companies, Keeping Rural America Connected: Costs and Rates in the Competitive Era (Washington, D.C., 1994), pp 2-4.

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offices and cable route miles illustrates the inability of rural LECs to recover their shared and common costs from a broad customer base. Central offices and route miles are common denominators that demonstrate economies of scale. Since MECA member LECs serve fewer subscribers per central office or route mile than do the RBOCs or any other large LEC, they have less opportunity to take advantage of economies of scale. Without the economies of scale there is no opportunity to spread shared and common costs over a large number of end users or over a vast number of switched minutes of use. Each loop and every billed access minute must make a greater contribution to shared and common costs than those same RBOC or urban LEC subscriber loops or minutes of use.

The State of Michigan has recognized that the small rural LECs are not in the same position as the large urban LECs. The Michigan Legislature and Governor recently enacted amendments to the Michigan Telecommunications Act, MCL 484.2101 et seq; MSA 22.1469(101) et seq, which became effective in December 1995. The new act aggressively promotes local competition. The 1995 Michigan Telecommunications Act Amendments, 1995 PA 216, added a new article, Article 3A, which contains a comprehensive scheme for local interconnection and unbundling. Under that scheme, the Michigan State

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Legislature like Congress, recognized that competition would be slower coming to rural areas. Therefore, the small LECs were directed to restructure their local rates prior to January 1, 2000, so that local competition will not be unduly economically burdensome for them.

**B. Summary Of MECA's Position.**

The FCC should not preempt the states' implementation of local competition. Many states, including Michigan, are well down the road in opening their local networks to competition. Since many states, including Michigan, have implemented regulatory schemes that take into account their own unique local market conditions, the FCC should leave these states to their own regulatory rules to implement competition. For those states that have not already addressed local competition, the FCC should monitor those states to ensure that they also enact rules that comply with the federal statute. However, the FCC should not prescribe its own strict or limited interconnection scheme because each state has significantly different markets. State utility commissions and state legislatures are better suited to balance the interests within the state markets than the FCC.

Further, the FCC should treat rural LECs differently than RBOCs and other urban LECs and each LEC should have its own unique interconnection rates

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that are uniformly charged to all carrier types or groups. All interconnection arrangements between LECs and other service providers should be on a mutual compensation basis, at a rate equal to the terminating carrier's costs including a sufficient contribution to shared and common costs, and any usage-sensitive costs to be recovered on a per minute of usage basis.

## **II. PROVISIONS OF SECTION 251.**

### **A. THE SCOPE OF THE FCC REGULATIONS UNDER SECTION 251 (11 25-41).**

These comments stress that the FCC should defer to the states' implementation of local competition interconnection rules. Second, the FCC must recognize that there is a difference between urban LECs and rural LECs in the implementation of a local competition interconnection scheme. States, therefore, being more familiar with local market conditions, are better suited to balance local competition interconnection arrangements.

#### **1. The FCC Should Defer to the States to Implement Local Competition Interconnection Arrangements.**

The 1996 Federal Telecommunications Act amended the Communications Act of 1934 and applies generally to interstate and foreign communications, as opposed to intrastate telecommunications. See 47 USC 152

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and 47 USC § 221(a). The 1996 amendments to the Communications Act do not preempt state authority over intrastate matters. The 1996 amendments have very limited impact and should be interpreted by the FCC accordingly.

It is clear from the tenor of the statutory language and the Notice of Proposed Rule Making ("NPRM") that the thrust of Congress' 1996 amendments is to eliminate barriers to entry or barriers to competition.

Sections 152(a) and 152(b) of the 1934 Communications Act (47 USC § 152) were left unchanged by the 1996 Telecommunications Act Amendments. Section 152(a) states that the Act generally applies to "all interstate and foreign communication by wire . . . ." Section 152(b) exempts the Act's applicability and strips the FCC of jurisdiction with respect to "any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier . . . ." The 1934 Communications Act and the 1996 amendments arguably do not apply to any MECA member companies for the reason that MECA member companies are engaged in interstate or foreign communication solely through the physical connection with the facilities of another carrier to

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transport the communication across state lines. The companies, however, have traditionally accepted FCC regulation of matters relating to interstate calling and related national interests such as interstate access and universal service.

With the passage of the recent amendments, Congress' failure to remove this exemption is instructive in that the FCC must not overbroadly interpret the 1996 amendments or its authority under those amendments, but should recognize that states continue to have authority over many issues raised by the NPRM. The FCC should interpret the 1996 amendments in a way that will most consistently apply the 1996 amendments in conjunction with Sections 152(a) and 152(b). So long as any state action does not interfere with the 1996 amendments' general mandate of removing barriers to entry or barriers to competition, the FCC must leave the specifics of local competition interconnection implementation to the states. For those states that have begun to move toward local competition, like Michigan, the FCC should leave the states to implement their own competitive schemes. The FCC cannot interpret the 1996 amendments in such a way as to eliminate the jurisdictional limitations of 47 USC § 152. Rather, they should be

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interpreted as establishing a broad national goal of encouraging local competition and setting certain broad parameters within which the states can work. Very few federal regulations are needed to implement the 1996 Act.

The basic thrust of the 1996 Act is to open the network to competition. Some states are already doing this. If states are not implementing local competition, the FCC arguably has an interest in requiring that states remove their barriers to entry and barriers to competition. Unless a state has erected barriers to entry or barriers to competition, the federal rules contemplated by this NPRM should not preempt state regulatory schemes for local competition. Only in the event that a state has erected barriers to entry or barriers to competition should the FCC be required to remedy the situation.

In Michigan, the Legislature enacted the Michigan Telecommunications Act of 1995 to address not only local competition implementation, but other "cutting edge" telecommunications issues. With respect to the implementation of local competition, Michigan already imposes upon the incumbent LECs a duty to negotiate. The Michigan Telecommunications Act of 1995 requires that in the long term total service long-run incremental cost ("TSLRIC") is to serve only as a price floor, but rates always remain subject to negotiation, subject to dispute resolution

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by the Michigan Public Service Commission. Under the Michigan Act, a basic local exchange provider is required to unbundle and separately price each basic local exchange service. Unbundled services and points of interconnection shall include, at a minimum, the loop and port components. (Section 355). A provider of basic local exchange is also required under the Michigan Telecommunications Act of 1995 to make available for resale, all local exchange services offered for retail on a nondiscriminatory wholesale basis. Wholesale rates initially shall be at levels no greater than current retail rates less the provider's avoided costs and in the long term all rates will be restructured so that no rate is less than the TSLRIC of the service. (Section 357).

The Michigan Legislature, Governor, and Public Service Commission also recognized that rural LECs should be treated differently than urban LECs. The Michigan Telecommunications Act of 1995 allows MECA member companies to restructure their basic local exchange rates prior to facing local competition. MECA member companies in total serve about 3% of the access lines in Michigan which is comparable to the federal rural exemption.

Section 251 of the Federal Telecommunications Act is consistent with the Michigan Act by exempting the applicability of interconnection obligations to a

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rural telephone company, at least until such company receives a bona fide request ("BFR") for interconnection services, subject to state commission determination of whether the request is unduly economically burdensome or technically feasible.

The Federal Act also yields to the state commissions by allowing the state commissions to suspend or modify interconnection obligations for telephone companies with less than two percent of the nation's subscriber lines.

In states like Michigan where the state has adopted a comprehensive scheme for local competition, the FCC clearly has an obligation to yield to the states the overall implementation of local competition. If the FCC mandates implementation under a specific federal structure, the Michigan compromise will have been for naught and the taxpayers of Michigan will have wasted their scarce resources. Michigan's complete regulatory scheme for local competition interconnection is the result of painstaking negotiations among all of the interested parties. The Michigan Legislature passed the Michigan Telecommunications Act after lengthy debate and committee considerations. Upon near unanimous passage by both State Houses and negotiations between the Governor and the leadership of those Houses, the law was signed and went into effect December 1, 1995. The Michigan Telecommunications Act of 1995 is the result of compromise through a

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truly democratic process. The FCC should let the telecommunications providers in Michigan use this regulatory scheme enacted here. Michigan has competition and is further along than most states. In Michigan, local competition is well underway in Grand Rapids, Detroit, and Lansing.<sup>2</sup> Through the passage of the Michigan Telecommunications Act, Michigan has implemented local competition interconnection, as described above. The FCC should, therefore, defer to Michigan's Public Service Commission to implement the Michigan Act which complies with the Federal Act. Similarly, in other states that have begun implementation of local competition interconnection, the FCC should defer to those states as well. The FCC should yield to the states that have no barriers to competition or barriers to entry.

Further, the FCC's tentative interpretation of the 1996 Telecommunications Act as mandating federal control over numerous specific issues that are both interstate and intrastate in nature is contrary to the recent direction Congress has taken with respect to most legislation. Of late, the thrust of

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<sup>2</sup>The certified carriers include Brooks Fiber (City Signal, Inc.), AT&T, MCI, TCG Detroit, MFS Intelenet and LCI International. Other probable competitors whose applications are pending include ACI, USN Communications and WinStar Wireless.

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recent Congressional enactments has been to return power to the states, rather than expand federal authority. The recent debate regarding the devolution of federal administration to state governments, ranging from school lunch programs to housing projects, is indicative of Congress' intent. The entire debate in the current Congress has been the need to transfer the administration of programs from Washington, D.C. to the states. The current Congress has been clear that state governments are more knowledgeable about their constituents and therefore are best suited to implement policy goals laid down by the federal government. Thus, Congress has stated clearly that it is more efficient for states to implement these types of programs because of the state governments' knowledge of their local conditions.

In the case of the 1996 Telecommunications Act, it is unlikely that Congress sought to provide more federal control over local issues that have historically been deferred to the states. Competition in local exchange territories is, by definition, an issue of local interest. Congress recognized that it does not know the conditions in each state. As Congress tries to devolve federal administration in all sectors to the states, Congress would not have authorized the federal government to assume control over this sole issue of local competition in local

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exchange territories when it historically has been under the purview of the states. It is for that reason that Sections 152(a) and 152(b) were purposefully left unchanged by Congress in the 1996 Telecommunications Act amendments. The FCC must, as Congress intended, defer to the states to implement local competition interconnection arrangements.

There is no perceived benefit regarding uniformity of interconnection arrangements. Each local exchange territory has certain market conditions that are not known to the FCC. Requiring implementation of a single national interconnection standard ignores these differences in market conditions. Uniformity and specific "parameters" eliminate the ability of competitors in a local exchange territory to negotiate a beneficial interconnection arrangement. Since the FCC cannot know the specific market factors to be considered in local competition interconnection arrangements, it makes the most sense for the FCC to defer to the states. If agreement is not reached between competitors, states would institute an arbitration process as prescribed by the law. Such a requirement is already in place in Michigan.

For these reasons, the FCC should defer to the states and allow the states to implement their own local competition interconnection arrangements. The

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local market factors, the thrust of the 1996 Telecommunications Act amendments, the purposeful election not to amend Sections 152(a) and 152(b) of the 1934 Communications Act, and Congressional intent as it relates to other issues of the day lead to the conclusion that the FCC should interpret its authority under the 1996 Telecommunications Act in a most limited way. Further, since Michigan's structure for implementation of local competition interconnection conforms to the 1996 Federal Act, the FCC should defer to the State of Michigan to regulate Michigan's own local competition interconnection arrangements. Similarly, the FCC should defer to other states that have implemented or are implementing regulatory schemes for local competition interconnection which comply with the 1996 Act.

**2. There Is a Difference Between Urban LECs and Rural LECs That Must be Considered in the Implementation of Any Local Competition Interconnection Arrangement.**

Differences between large LECs and small LECs must be considered in the development and implementation of local interconnection arrangements. MECA member companies, as well as other small rural LECs, not only have few customers over which to spread their common costs, but because of the low demand in rural areas, rural LECs also have few services over which to spread their shared and

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common costs. Although rural LECs have the technology to offer custom calling features, the demand for such services is limited in rural areas.

States and their commissions are more knowledgeable about the specific market conditions of the local exchange territories. The Michigan Legislature and Public Service Commission recognized the difference between urban LECs and rural LECs. For that reason, the Michigan Legislature temporarily exempted all providers who provide basic local exchange service or basic local exchange service and toll service to less than 250,000 end users from the interconnection requirements. Congress, too, has identified that there is a difference between rural LECs and urban LECs. For these reasons, the FCC, in any interpretation of its authority under the 1996 Federal Telecommunications Act amendments, must recognize the differences between rural LECs and urban LECs. The FCC should, however, simply defer to the states since the states have a better understanding of the local differences.

**B. Obligations Imposed By Section 251(c) On "Incumbent LECs" (¶¶ 42-194).**

Section 251(c) imposes certain obligations on "incumbent LECs."

MECA notes that the obligations contained in subsection (c) do not apply to a rural

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telephone company until it has received a BFR for interconnection, services, or network elements and the state commission determines that the request is not unduly economically burdensome, is technically feasible, and is consistent with Section 254. See Section 251(f)(1)(A). Even though there is a temporary exemption, the obligations of subsection (c) will eventually have an impact on the rural telephone companies. The Commission's regulations should take into account the fact that Congress has expressed concern for the impact on rural telephone companies and should be flexible enough to allow states like Michigan to regulate in a manner that accommodates the unique circumstances of rural LECs.

In **paragraph 45**, the Commission seeks comments on whether state commissions are permitted to impose on non-incumbent LECs any of the obligations that the statute imposes on incumbent LECs. MECA encourages the Commission to allow the states to implement their own individual state statutory schemes that are designed to produce fair and equitable competition arrangements. The 1996 Act should not be construed to preempt state regulation of local exchange carriers and their common duties. First, as noted earlier, the Act should be interpreted to maintain the broadest possible authority at the state level over intrastate communications. Second, Section 251(d)(3) explicitly states that the

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Commission shall not preclude the enforcement of any regulation, order, or policy of a state commission that establishes access and interconnection obligations of "local exchange carriers" (not just the incumbent). Common sense indicates that the duties could be consistently applied to all LECs. For example, the duty to negotiate in good faith has already explicitly been applied to incumbents and non-incumbents by Section 251(c)(1) of the 1996 Act. States should be allowed to impose duties on any provider who enters the local market so that all providers enter on the same footing and have similar non-discriminatory obligations as all other competitors in that market. In fact, in order to foster a truly competitive market with a fair playing field, the proper policy is to treat all the same. Since the law defers the authority to promulgate rules for non-incumbents to the states, the best the FCC can do is encourage states to adopt this policy.

**1. Duty To Negotiate In Good Faith.**

In **paragraph 47**, the Commission seeks comment on the extent to which it should establish national guidelines regarding good faith negotiation. One question is whether the use of non-disclosure agreements should be deemed to violate the duty to negotiate in good faith. MECA feels strongly that the use of non-disclosure agreements should be permitted.

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Companies have used non-disclosure agreements for years. Non-disclosure agreements facilitate negotiations. Common sense indicates that without the trust to speak frankly negotiations will be inhibited. Court rules applied in regulatory proceedings even recognize that negotiations are inadmissible and entitled to protection. In any other industry the possibility would not even be considered that negotiations between customers and suppliers would be subject to public disclosure.

It is a fallacy to infer that only incumbent LECs want the right to privacy. The FCC has no basis to assume that new entrants have no market or trade secrets. All telecommunications providers are private business enterprises and should be treated like other businesses--not like governmental entities with sunshine requirements. Even for governmental entities, sunshine requirements often inhibit appropriate decision-making. For example, in Michigan where there is a three-member commission, sunshine requirements severely handicapped those commissioners from discussing cases privately amongst themselves and, in light of that problem, the Legislature eliminated the sunshine requirements for these commissioners. Incumbent LECs, like other private business entities, should not have to disclose their negotiations to the public.